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**Case No. 06-XXXXXX**

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

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| In Re Grand Jury Proceedings | ) District Court Nos. |
| | ) CR 06-90231 MISC WHA |
| Grand Jury # 04-1 SF | ) CR 06-90184 MISC WHA |
| Investigation 2004R00608 | ) |
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EMERGENCY MOTION FOR STAY OF CUSTODY ORDER
OR, IN THE ALTERNATIVE, BAIL PENDING APPEAL
UNDER FRAP 8 AND 27
RECALCITRANT WITNESS APPEAL

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Honorable William Alsup
United States District Judge

GERAGOS & GERAGOS
MARK J. GERAGOS (Bar No. 108325)
350 South Grand Avenue, 39th Floor
Los Angeles, California 90071-3480
Telephone (213) 625-3900
Facsimile (213) 625-1600

Attorneys for Appellant
GREG FRANCIS ANDERSON

## CIRCUIT RULE 27-3 CERTIFICATE
## FACTS CONSTITUTING EMERGENCY

On July 5, 2006, the District Court held appellant Greg Francis Anderson in civil contempt pursuant to 28 U.S.C. § 1826, denied bail or a stay of the judgment, and ordered him remanded to the custody of the United States Marshall for confinement until he testifies or the grand jury term expires. That same day, Mr. Anderson filed a Notice of Appeal of the order.

Mr. Anderson is likely to prevail on his appeal. He is the person primarily responsible for the care of a young son, is currently on supervised release after serving a period of incarceration and electronic monitoring and home confinement from a previous guilty plea, he is not a flight risk, nor does he pose any danger to the community. For these reasons, and given that the appeal itself is to be determined on an expedited basis, emergency relief in the form of an order staying execution of the District Court's contempt order, or granting bail pending appeal, is necessary and just to avoid irreparable harm to Mr. Anderson.

Counsel for Appellee United States of America was notified of this motion on July 10, 2006, and a copy of the motion will be served by facsimile and overnight courier today.

The United States of America is represented by Assistant United States Attorneys Matthew A. Parella, Jeffrey D. Nedrow, and Jeffrey R. Finigan, 150

Almaden Boulevard, Suite 900, San Jose, California 95113, Telephone: (408) 535-5061, Facsimile: (408) 535-5066.

Mr. Anderson respectfully requests that this matter be ruled upon on the day the motion is filed or the next day. Counsel for Mr. Anderson further certifies that this motion has been filed at the earliest practicable time following the district court's denial of bail on July 5, 2006.

**EMERGENCY MOTION**

Appellant Greg Francis Anderson hereby moves for an order staying execution of the lower court's order placing him in custody, or an order granting him bail pending his appeal. This motion is made pursuant to FRAP 8 and Circuit Rule 27-3, and is based on the attached memorandum of points and authorities, all files and records in this case, and any additional information that the Court may require.

Respectfully submitted,

Dated: July 10, 2006

GERAGOS & GERAGOS
A Professional Corporation

By: _____
MARK J. GERAGOS
Attorneys for Appellant
GREG FRANCIS ANDERSON

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Mr. Anderson refused to testify before this Grand Jury after being served with a subpoena to do so. He asserted several grounds as just cause for his refusal. The District Court denied an evidentiary hearing and summarily remanded Mr. Anderson to custody. The District Court then denied Mr. Anderson bail or a stay of the judgment. This farcical substitute for due process – and the meaningful uninhibited adversary proceeding required under the law – was even more galling given that:

1. The District Court conceded that there was a continuing and ongoing violation by this grand jury of the secrecy mandated by Rule 6(e), and the District Court assumed that the leaks would continue.

2. The government violated the terms of its plea agreement with Mr. Anderson by calling him before the grand jury. The government admits that in plea negotiations it initially insisted on cooperation from Mr. Anderson, but then dropped that demand when Mr. Anderson and his then-lawyer Tony Serra made it clear that he would never agree to cooperate. Mr. Anderson reasonably believed that the plea agreement protected him from being compelled to testify. It is not disputed that Mr. Anderson served real prison time rather than cooperate with the Government. The District Court denied Mr. Anderson the right to call Mr. Serra

or any other witness on these issues.

3. In the face of allegations by Mr. Anderson that he was the subject of illegal wiretaps or eavesdropping, the government conceded that it possessed recordings of Mr. Anderson's conversations, recordings which the government had in its possession prior to Mr. Anderson entering into his plea agreement in July 2005. Those recordings were never turned over to Mr. Anderson or his counsel in flagrant violation of Rule 16. Even now the government has refused to disclose these purported recordings of Mr. Anderson to the defense. The District Court declined to order them disclosed, and instead ruled that Mr. Anderson's counsel could object to any questions before the grand jury related to the recordings. That solution is absurd because neither Mr. Anderson nor his lawyers know the thus-far undisclosed tapes' contents.

All of these grounds were summarily rejected without evidentiary hearing. It is manifest that the District Court abused its discretion in determining that two of the three issues were frivolous, and that the appeal would be taken for the purposes of delay.

## II. STATEMENT OF FACTS

In 2005, Mr. Anderson, an athletic trainer, pled guilty to one count of conspiracy to distribute and possess steroids and one count of conspiracy to

launder money instruments. He served three months in federal custody and has just completed serving the remainder of his sentence on electronic monitoring. The guilty plea was entered after a grand jury empaneled in the Northern District of California in 2003 (the "2003 Grand Jury") returned an indictment against Mr. Anderson and others accusing them of violations of law related to the alleged use of illegal, performance-enhancing drugs by professional athletes.

**A. Grand Jury Secrecy Was Virtually Nonexistent, And Continues Regularly To Be Breached.**

On March 23 of this year San Francisco Chronicle reporters Mark Fainaru-Wada and Lance Williams published their book, *Game of Shadows*, about the Balco scandal. The book was based almost entirely on information that was leaked from the purportedly secret proceedings before the 2003 Grand Jury. The breach of grand jury secrecy was and continues to be so egregious that a separate grand jury investigation into the secrecy violations has commenced in the Central District to investigate the source of the leaks.

**B. The Government Promised Mr. Anderson That In Exchange For Pleading Guilty He Would Not Be Required To Provide Testimony Or Information.**

On July 15, 2005, Mr. Anderson and the government entered into a plea agreement, pursuant to which Mr. Anderson pled guilty to a violation of 21 U.S.C. § 846 and a violation of 18 U.S.C. § 1956(a)(1)(B)(I). Crucial to Mr. Anderson

was whether he would be required to cooperate with the government and provide testimony or other cooperation on matters arising out of the indictments.

Mr. Anderson rejected a series of draft plea agreements that called on him to provide information to the government. Mr. Anderson's counsel at the time, J. Tony Serra, made Mr. Anderson's position clear to the government. After lengthy negotiations, the government agreed that Mr. Anderson would not be required to produce information. It was only when the government relented on this issue, deleted the names of athletes from the agreement, and assured Mr. Anderson that his plea would end this matter and he would not have to cooperate in the future that Mr. Anderson agreed to enter the plea bargain.

**C. The Government's Possession Of Recordings And Its Refusal To Produce Them To The Defense.**

The government has finally admitted that it possesses multiple recordings of Mr. Anderson, at least one of which it failed to disclose to his prior counsel and which it admitted possessing only after previous denials, and which it now admits it possessed prior to Mr. Anderson's guilty plea.

In the book *Game of Shadows*, authors Lance Williams and Mark Fainaru-Wada refer on eight separate occasions to a "secret recording" made of Mr. Anderson in the spring of 2003 in which Mr. Anderson allegedly makes numerous remarks regarding baseball's steroid testing, Barry Bond's use of an undetectable

performance-enhancing drug to beat drug tests, and Mr. Anderson's own alleged steroid use. The two reporters state that the secret recording was made at the government's request by a former athlete who asked not to be named. However, during the months-long discovery process leading up to Mr. Anderson's plea, no tape of this recording was ever turned over to the defense nor was a transcript provided detailing the conversation. No valid reason has been given why the "secret recording" was not turned over.[1]

Mr. Anderson recalls making one of the statements credited to him during a phone conversation with a friend who was in fact a former athlete. Mr. Anderson would testify that the conversation was by phone, not in person where it could have been recorded. The only way such a conversation could have been recorded is by wiretap.

The government has given varying responses when confronted with evidence of illegal recordings. When the government was asked whether electronic evidence such as tapes existed at a hearing in winter of 2004, AUSA Nedrow initially answered that they did, but later amended that statement and said he had misspoken.

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[1] The Government now admits possession well before the date of entry of a plea in the underlying matter but incredibly claims that since they were engaged in plea negotiations that it apparently slipped through the cracks.

When confronted with Mr. Anderson's evidence that secret recordings must have been made, AUSA Nedrow submitted a declaration on June 26 using prolix language to deny the existence of a wiretap "initiated" by the government. That declaration was hardly the whole truth. A day later, AUSA Nedrow filed another declaration in which he admitted the government possessed a recording of Mr. Anderson. Nedrow admitted the government had the recording before Mr. Anderson's guilty plea and that the government had never disclosed it in discovery.

The government refuses to produce the recording to Mr. Anderson or his counsel, and has filed the description of the recording with the District Court *ex parte* and under seal to prevent Mr. Anderson's counsel from examining it.

**D. The Proceedings Below.**

A second grand jury in San Francisco was seated and subpoenaed Mr. Anderson to testify on May 18. This second grand jury features virtually the same cast of characters that resulted in the first grand jury leaks. After one extension of time to appear, on June 5 Mr. Anderson filed a Motion to Quash the subpoena based on the repeated violations of grand jury secrecy and counsel's unavailability until a later date. On June 7, the District Court continued Mr. Anderson's appearance before the grand jury to June 22. Mr. Anderson appeared that day and

asserted his Fifth Amendment privilege. The government provided an immunity order, and Anderson then refused to answer any questions based upon the prior and ongoing grand jury leaks and his belief that his testimony would likely be released to the press. Mr. Anderson was taken before District Court Judge William Alsup. After hearing arguments from both sides, Judge Alsup refused to allow Mr. Anderson to call witnesses and denied the request for an evidentiary hearing. Instead, the District Court ordered that additional arguments would be heard on June 29th to determine if the defense could demonstrate "cogent legal theories".

**1. The June 29 Hearing.**

At the June 29 hearing, the District Court denied Mr. Anderson's argument that the government's promises during his plea negotiations were just cause for his refusal to testify. The court also refused to allow Mr. Anderson to call his former attorney, Tony Serra, to testify on the matter. (RT 8-11.)

The District Court also rejected Mr. Anderson's argument that the continuing breaches of grand jury secrecy constituted just cause not to testify. The court, however, assumed as a matter of fact that the leaks occurred and would continue to occur: "I'm going to give you the credit. You can prove up there has been leaks, and there are likely to be leaks in the future." (RT 16.) The District

Court refused to allow Mr. Anderson to call as witnesses any of the persons implicated in the leaks. (RT 18)

In the meantime, the government had filed, under seal and *ex parte*, a declaration by AUSA Nedrow contradicting his prior assurances that the government possessed no recordings. That declaration contained a "Paragraph 8" which, apparently, describes a recording of Mr. Anderson and the supposed circumstances under which it was made. The District Court has barred Mr. Anderson's counsel from hearing the recording, or even from reading "Paragraph 8."

The government admitted at the hearing that it possessed the recording during its prosecution of Mr. Anderson, but withheld it from the defense:

> Mr. Nedrow: First of all, I can state with confidence that we did not provide notice of this, this recording to the defense during the Balco case.... We obtained it very close to the time of the guilty plea in the case. And for reasons I summarized for the Court it sort of came in under a circumstance different than a normal government investigation. And in that manner we did not disclose it.

(RT 32.) The District Court did not take any further evidence on that matter, and did not make any finding whether the recording was illegal. In fact, the judge took at face value the government's claim that they received the recording "very close to the time of the plea" when in fact, by their own admission, the government

received the tape in December 2004, a full seven months before Mr. Anderson's July 2005 plea. Instead, the District Court adopted the government's proposal that it be free to ask "ninety-five percent" of its intended questions which, the government asserted, did not relate to the recording. Mr. Anderson's counsel objected, arguing that without disclosure of the recording it would be impossible for him to determine what questions were tainted by the potentially-illegal recording. (RT 55-70.)

The District Court ordered Mr. Anderson to testify. (RT 71.) Taken before the grand jury, Mr. Anderson declined to testify on the grounds of the secrecy violations, his plea agreement, and the potentially-illegal recordings. The District Court set a hearing on an order to show cause re contempt for July 5.

**2. The July 5 Hearing.**

In advance of the July 5 hearing, Mr. Anderson submitted a witness list but the District Court refused to allow Mr. Anderson to call any witnesses. (RT 34-37.) He did not make any finding whether the Paragraph 8 recording was illegal, nor did he order the recording disclosed to Mr. Anderson's counsel so that the defense could determine whether grand jury questions were derived from that recording. The District Court determined that the government's representations were sufficient and refused to allow an evidentiary hearing on the matter. (RT 33-

34.) The District Court also refused to permit an evidentiary hearing on the violations of grand jury secrecy, even though the court admitted that the breaches were severe: "The Court was totally prepared to assume that Mr. Geragos could prove rampant leaks. I accept that. I believe he could." (RT 36.)

The District Court found Mr. Anderson to be in contempt, and ordered him confined, denying his motion for a stay or bail pending appeal.

## III. ARGUMENT

### A. DUE PROCESS REQUIRES THAT THE COURT HOLD AN UNINHIBITED ADVERSARY HEARING, INCLUDING THE EXAMINATION OF WITNESSES.

Mr. Anderson was entitled to a public trial with the full protections of due process on the pending civil contempt charges, including the ability to call and examine witnesses in an uninhibited adversary proceeding. Title 28 United States Code section 1826(a), which governs civil contempt, requires a finding that the accused recalcitrant witness acted "without just cause" before he is confined. Further, the accused is entitled to an "uninhibited adversary hearing," including the calling and examination of witnesses relevant to his defenses:

> [T]he hearing Alter received was not the "uninhibited adversary hearing" contemplated by section 1826(a). The hearing was largely confined to the perfunctory reception of affidavits, a round of oral argument, and some offers for the record. That "uninhibited adversary hearing" ... requires, at the very least, that a witness be allowed to probe all non-frivolous defenses to the contempt charge. The constitutional guarantee of due process of law means more than a silhouette of justice; it requires that judicial determinations affecting

> the freedom of the individual be openly arrived at after full, fair, and vigorous debate on both sides of all substantial issues.

*U.S. v. Alter*, 482 F.2d 1016, 1024 (9th Cir. 1973) (internal quotation marks and citations omitted).

Here, Mr. Anderson had substantial and genuine defenses that required the calling and examination of witnesses. He was entitled to develop the facts regarding the breaches of grand jury secrecy. He was entitled to the testimony of his prior counsel, who is currently incarcerated, to demonstrate that the government's demands for testimony violate his plea agreement. He was entitled to examine witnesses regarding what appear to have been be illegal recordings by the government which, if proven, may have provided a defense to the contempt charges.

**B. THE IMPORTANT AND COMPLEX LEGAL AND FACTUAL ISSUES DEMAND A FULL EVIDENTIARY HEARING AND EXAMINATION OF WITNESSES.**

**1. Grand Jury Secrecy Is A Crucial Interest Of Mr. Anderson, Not Merely The Government, And The Repeated And Continuing Violations Of Grand Jury Secrecy Fatally Undermined The Government's Demand To Compel Mr. Anderson's Testimony.**

The gross, callous, and destructive breaches of grand jury secrecy in this case create ample just cause for Mr. Anderson's refusal to testify. The secrecy breaches illustrated in *Game of Shadows* are brazen. The authors boast:

> In our reporting on the BALCO story of the San Francisco Chronicle, we obtained the secret grand jury testimony for Barry Bonds, Jason and Jeremy Giambi, Benito Santiago, Gary Sheffield, Bobby

> Estalella, Armando Rios, and Tim Montgomery. We also reviewed confidential memoranda detailing federal agents' interviews with Trevor Graham, C. J. Hunter, John McEwen, Emeric Delczeg, and Rios. Other sealed material we reviewed including unredacted versions of affidavits filed by the Balco investigators; email between Balco owner Victor Conte and several track athletes and coaches regarding the use and distribution of drugs; a list of evidence seized from the BALCO storage locker; and a document prepared to brief participants in the raid on BALCO.

Mark Fainaru-Wallace & Lance Williams, *Game of Shadows*, 282 (Gotham Books 2006).

In addition to, the government, witnesses have an important interest in preserving secrecy. Rule 6(e)(2) not only protects the public interest in assuring witnesses' full disclosure, it also protects important private interests such as avoidance of public disclosure of confidential information and protection of those who provide information. *Douglas Oil Co. v. Petrol Stops Northwest*, 441 US 211, 219 (1979); *United States v. RMI Co.*, 599 F2d 1183, (9th Cir. 1979) (grand jury secrecy exists, in part, to encourage witnesses to testify without fear of retaliation). One of the primary reasons for grand jury secrecy is to avoid public humiliation caused by illegal disclosures. *Douglas Oil Co.*, 441 U.S. at 219.

We do not suggest that any time there is a grand jury leak a witness may refuse to testify. Rather, given the unique facts below – where the district court itself assumed there would be leaks of Mr. Anderson's prospective testimony – a

witness should not be held in contempt without examination of questions such as whether the government is in fact making a good faith and aggressive effort to stop the leaks; and whether leaks have been caused by government agents who remain involved in the investigation.[2]

**2. The Government Should Be Estopped From Compelling Mr. Anderson's Testimony Because To Do So Would Deny Him The Benefits Of His Plea Bargain.**

The demand by the government for Mr. Anderson to testify violated the agreement entered into by Mr. Anderson and the United States Attorney's Office. The most important issue raised during plea negotiations was whether Mr. Anderson would be required to cooperate with the government and provide testimony on matters arising out of the indictments. After lengthy negotiations, and Mr. Anderson's clear insistence that he would not enter into a plea agreement if he was required to cooperate with the government in any manner, the government agreed to relieve Mr. Anderson of any duty to cooperate in exchange for his plea. Relying on the government's representations, Mr. Anderson pled guilty on July 15, 2005. The government's effort now to compel Mr. Anderson's testimony violates the agreement.

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[2] If allowed to call witnesses, Anderson would show that at least one government agent, IRS investigator Iran White, has admitted responsibility for leaking material in this matter.

It is well-settled that plea bargains are contractual in nature and subject to contract-law standards. *United States v. Read*, 778 F.2d 1437, 1441 (9th Cir. 1985. In a dispute over the terms of a plea agreement, the district court is required to determine "what the defendant reasonably understood to be the terms of the agreement when he pleaded guilty." *United States v. De La Fuente*, 8 F.3d 1333, 1337 (9th Cir. 1993). The defendant's understanding at the time of the plea controls. *United States v. Anderson*, 970 F.2d 602, 607 (9th Cir. 1992).

Mr. Anderson was induced to enter the plea agreement on the understanding, which was of vital importance to him, that it protected him from testifying any further on the matter. The government knew this and the court knew this. Mr. Anderson's understanding is supported by the fact that earlier drafts of the plea agreement prepared by the government contained provisions requiring him to cooperate and identified specific conduct and specific athletes concerning which cooperation was sought. Based on Mr. Anderson's insistence that he would not plead if required to provide such testimony and information, these provisions were removed from the agreement. Mr. Anderson was advised by his defense counsel, J. Tony Serra, that he would not be required to cooperate in the government's investigation.

In a remarkably similar case, this Court ruled in an unpublished opinion that

a defendant/contemnor could prove by parol evidence that he could not be required to testify before the grand jury. *U.S. v. Singleton*, 1995 U.S. App. LEXIS 3302 (9th Cir. 1995). In *Singleton*, as here, the government sought to include in the proposed plea agreement provisions for cooperation by the defendant, which were removed at the defendant's insistence. Later, when the government subpoenaed the defendant to testify before the grand jury, this Court held that although on the face of the agreement there was no promise protecting the defendant from grand jury subpoena, and although the agreement contained an integration clause, parol evidence of the negotiations was admissible to prove the defendant's understanding that he was protected from grand jury subpoena:

> Given the fact that the § 5K1.1 provision was included in previous discussions where various cooperation agreements were contemplated, it is not unreasonable for Singleton to have believed that an absence of a § 5K1.1 provision indicated that he would not be required to cooperate with the Government.

This Court also rejected the argument that if a defendant is relieved of the duty to "cooperate," he could not reasonably understand that to mean he was free from being compelled to testify by grand jury subpoena. The Court held that "Singleton's understanding of 'cooperation' to include compelled testimony is plausible." Thus this Court rejected in *Singleton* the basis for the district court's summary rejection of Anderson's argument in this case.

Both the district court and the government believed that Ninth Circuit Rule 36-3 bars citation of *Singleton* because it is unpublished. But *Singleton* is properly cited here "for factual purposes" as permitted by Rule 36-3.[3] *See Sorchini v. City of Covina*, 250 F.3d 706, 708 (9th Cir. 2001). This case involves the same prosecutor — the United States Attorney for the Northern District of California — as was involved in *Singleton*. Thus *Singleton* is factually relevant to show that the United States Attorney had **notice** that a defendant told he would not be required to cooperate might plausibly understand that he was protected from the compulsion of grand jury subpoena. The United States Attorney should have clearly disclosed that refusal to cooperate with the Government did not guarantee immunity from grand jury subpoenas; and it should have disclosed that if Mr. Anderson refused to answer a grand jury subpoena, he could be found in contempt and might have to serve a longer sentence than bargained for in the plea agreement.

Apart from *Singleton* other authority exists to support Mr. Anderson's position. The Court in *Singleton* relied on the decision of the Court of Appeals for the Fourth Circuit in *United States v. Garcia*, 956 F.2d 41 (4th Cir. 1992), which, for the same reasons articulated in *Singleton*, held that based on parol evidence the

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[3]Unpublished cases may be cited "for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or the existence of a related case." (Circuit Rule 36-3.)

defendant was not required to provide testimony to the grand jury.

**3. The District Court Failed To Properly Determine Whether The Grand Jury Proceeding Is Tainted By Illegal Recordings**

Illegally-made recordings may not be used in either trial or grand jury proceedings, and a witness before the grand jury has just cause to refuse to answer any question derived from such recordings. 18 U.S.C. § 2515.

In *Gelbard v. United States*, 408 U.S. 41, 51-52 (1972), the United States Supreme Court held that where the government used information derived from illegal recordings, grand jury witnesses had just cause to refuse to answer questions, and thus had a defense in contempt proceedings. *Gelbard* sets forth a basic procedure for how district courts must address illegal recording issues raised by grand jury witnesses. Upon a claim of illegal recording by a witness, the government must affirm or deny the existence of the recording, and disclose it, and the circumstances under which the recording was made, to the court. *Id.* at 54-55. The court must then determine whether the recording was illegal. The defense is entitled to the material, but if the government objects on secrecy grounds to the disclosure of the questioned material to the defense, the court must determine whether the material is, indeed sensitive, and if so then determine what summary of the material may be provided to the defense. *In re Lochiatto*, 497 F.2d 803, 807-08

(1st Cir. 1974).

Here, the trial court provided no such basic due process to Mr. Anderson. Although the government eventually admitted (after prior denials) that it possessed a recording of Mr. Anderson, and presumably provided the District Court some information regarding the circumstances under which it was made, the defense was deliberately kept entirely in the dark regarding those circumstances. The District Court never made any finding that the information provided to it *in camera* was of any special secrecy, and refused to provide the defense any summary of non-sensitive information which Mr. Anderson could use in his defense.

Finally, the District Court refused even to rule whether the recording itself was legal or illegal. The *ad hoc* solution arrived at below, relying on the government to police itself whether its interrogation was tainted by the potentially illegal recording falls far short of the adversarial protections contemplated by the code. *See Alderman v. United States,* 394 U.S. 165, 182 (1969).

## IV. CONCLUSION

For the foregoing reasons, Mr. Anderson respectfully requests that the Court stay the order below or grant bail on an unsecured bond.

Respectfully submitted,

Dated: July 10, 2006

GERAGOS & GERAGOS
A Professional Corporation

By: _____
MARK J. GERAGOS
Attorneys for Appellant
GREG FRANCIS ANDERSON

government over individual questions if you think they are somehow tainted by that tape recording, fine, but you would have to answer those questions at a minimum that were asked of you before.

If you are willing to do that and do that in good faith, then fine. We are not going to put you into custody. But if you are not willing to do that, I'm going to order you into custody.

Mr. Geragos, what do you want to say?

MR. GERAGOS: Well, what I would ask is -- I believe -- if I could have a moment to confer with my client?

THE COURT: Sure. Go ahead.

(Discussion held off the record.)

MR. GERAGOS: He is not going -- on the state of this record he is not going to answer any questions.

What I would ask the Court to do is, I do have a Notice of Appeal which I'm going to file with the Court's permission now.

I would ask the Court to either stay your order for just a brief period of time or grant him bail in order for me to go to the Ninth Circuit with the complete record here and seek bail on appeal if the Court will allow me that.

The brief period of time that I'm asking for is, allow me a stay until Tuesday of next week. I will get the paperwork filed in the Ninth Circuit by -- today is Wednesday.

THE COURT: Tuesday of next week is a week away.

MR. GERAGOS: Six days, which is about the same amount of time as he has been afforded here.

So if the Court wants by Monday of next week, and I will have it filed in the Ninth Circuit by Friday. And I do have, as I indicated, the Notice of Appeal already prepared and I would be -- I will be in the Ninth Circuit and I will file the notice for bail on appeal with the Ninth Circuit on Friday and tell them that the Court has stayed it until Monday morning, and I would ask the Court to do that.

He has a son that he -- a young son that he does take care of and he believes strongly in these issues and he believes strongly that he has got just cause.

I do not believe that these are frivolous issues. I know that my belief doesn't matter. It's the Court's, but I would hesitate a guess that the Court does not believe them to be frivolous and I believe that's the standard for granting at least a stay or, in the alternative, bail.

THE COURT: Well, we are not dealing with the criminal side of a conviction and bail pending appeal. We are dealing with Section 1826 and the whole purpose of that is to cause to put pressure on the witness to obey the law, and so it's not quite the name.

MR. GERAGOS: I understand.

THE COURT: I understand your request.

Let me hear from the government. Mr. Parrella, what do you say to Mr. Geragos's request?

MR. PARRELLA: Well, Judge, we oppose it and, first of all, I don't think the Court completed its order.

THE COURT: I haven't yet, but I want to hear what you have to say on this point.

MR. PARRELLA: Assuming that the Court is inclined based on Mr. Geragos's response to order this witness's confinement, we would oppose any bail pending any appeal.

It is the government's assertion that this appeal is solely taken for delay and that's a specific ground listed as being something that is excluded from the grounds that bail is permitted for under 1826.

The Court is aware, as is counsel, of the time constraints of this Grand Jury. The government has been more than reasonable in its past dealings with counsel and this defendant, giving them more than enough opportunities. It's our position that the time has run out, the string has run out.

If it's the Court's order that he be confined, he should be confined today. His appeal can go forward without bail.

MR. GERAGOS: If I may address that, your Honor?

THE COURT: How about the -- really, it's the delay point that bothers me most. The Grand Jury's life is going to expire soon. You have done -- listen, you have done a

masterful job. Your client was served way back in March or something. March goes by. April goes by. May goes by. June goes by and, still, you have done a masterful job of postponing this record and if you wait a few more weeks, the Grand Jury will go away.

MR. GERAGOS: I understand that. However, I believe that we have made more than a sufficient case, that there is grounds for a just cause -- what I call a just cause hearing.

All I'm asking for is until Monday so that I can order the transcript, attach the transcript as an exhibit and file it with the Ninth Circuit.

In fact, if the Court is not inclined to give bail because of the short time period left or the short string to play out with the Grand Jury, all I'm asking is that the Court stay the order until Monday, which is four days from today. My office will have filed in the Ninth Circuit by Friday a request for bail on appeal.

There is a rule that the appeal has to be decided in any event within 30 days in the Ninth Circuit in an 1826 recalcitrant witness issue, so I'm asking the Court to stay that for four days. I don't think that's an unlikely or an unreasonable request.

I would remind the Court that the first time that I asked for a continuance here was because of a conflict of interest in my schedule. The government would not go along

with that and I had to take off from a trial down south and fly up here in order to request that of the Court.

So I don't think four days is going to make a whole lot of difference in terms of its coercive effect on my client and we are not even asking for bail at this point.

All I'm asking -- I mean, I've asked for bail. I'm assuming the Court has denied that, and I'm asking that the Court stay it so that I can file with the Ninth Circuit and allow them to make the decision.

Generally my experience is if they think there is a significant issue, they will. If they don't, they won't and then that's the end of that.

THE COURT: The motion for stay is denied and under the statute the Court finds that there has been a refusal by Mr. Anderson to answer the Grand Jury's questions. There has been no just cause for that.

The government has carried its burden of proof and the Court determines that in order to coerce Mr. Anderson into answering those questions that are properly being asked by the Grand Jury, you have got to go into custody now. It's not going to be delayed. The marshals will take very good care of you.

If Mr. Geragos gets a stay or an order from the Ninth Circuit tomorrow morning to get you released, God bless you, but I think under the statute I am not authorized or I should

not grant this.

The statute says, "No person confined pursuant to Subsection A shall be admitted to bail pending the determination of an appeal," et cetera, et cetera, "if the appeal is frivolous or taken for delay."

Now, at a minimum I think two of these issues are frivolous. Maybe the one about the plea agreement, I think it is very insubstantial. It might be unfair to characterize that as frivolous, but the Court feels that it is highly unlikely that you would be right on that.

But without any question in light of the short period of time left on this Grand Jury, four days is delay. The issuance of bail under these circumstances would effectively nullify this order, period. That's the way it is. There would be no confinement whatever. So given where we are in the life of this Grand Jury, any further delay is unwarranted.

So I'm sorry, Mr. Geragos. I think you have done a great job in this case, but under the statute the Court finds that this would effectively be taken -- the appeal would be taken for delay and that admission to bail or as you put it a stay would have the same effect. So that motion is denied.

MR. GERAGOS: Would the Court order that he been housed at the City of San Francisco Jail in San Bruno, which I believe has a reciprocal arrangements with the Feds?

As a civil contemptor, he is entitled to a host of

different treatment than a normal in-custody defendant.

THE COURT: Let me hear from my marshals. Who wants to answer that question?

Here comes Kelly MacGowan, U.S. Marshal.

MARSHAL MACGOWAN: Good afternoon. We have made arrangements to house him at Dublin, at the Federal Detention Center.

THE COURT: Speak up again.

MARSHAL MACGOWAN: We have made arrangements to house him at Dublin, at the Federal Detention Center.

THE COURT: What's wrong with Dublin? That's where all the defendants want to go, is Dublin. They don't want to go anywhere else.

MR. GERAGOS: Can I have one more moment?

(Discussion held off the record.)

MR. GERAGOS: I just reiterate -- that's where all the convicted, post conviction defendants want to go. As a civil contemptor --

THE COURT: Even the pretrial, that's where they want to go.

MR. GERAGOS: I'm asking for, if we could, that the Court order for the City of San Francisco Jail.

(Discussion held off the record.)

MR. GERAGOS: My client's desire is wherever the Court wants to send him. If it's Dublin, it's Dublin. He will

I go.

THE COURT: Thank you for cooperating on this, Mr. Anderson. I think you probably would prefer Dublin.

And is there any other order of the Court that needs to be considered at this point?

MR. GERAGOS: If I could have one moment with counsel?

(Discussion held off the record between counsel.)

MR. GERAGOS: There is nothing else, your Honor.

THE COURT: Mr. Anderson, do you understand now?

MR. ANDERSON: Yes, sir.

THE COURT: I think these marshals will take good care of you.

This is meant to encourage you to change your mind and to give the testimony that you have refused to answer, leaving it open to you on future questions to come back and argue with me about paragraph eight tape and so forth, but without any question the particular inquiries that were asked of you on this record were proper.

So I think we are now at an end, or is there yet more that needs to be done? Do I need to sign a written order?

MR. PARRELLA: That was what I was going to bring up, Judge, whether you would like the government to draft a proposed order or whether the Court will.

THE COURT: Send one up by tomorrow morning and let